North Hills Office Services *and* Service Employees International Union, Local 32B–32J, AFL–CIO and National Organization of Industrial Trade Unions *and* Service Employees International Union, Local 32B–32J, AFL–CIO. Cases 22–CA–25399 and 22–CB–9585

July 9, 2004

DECISION AND ORDER

BY MEMBERS SCHAUMBER, WALSH, AND MEISBURG

On February 2, 2004, Administrative Law Judge Margaret M. Kern issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel and the Charging Party filed answering briefs.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[2] findings,[3] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, North Hills Office Services, Woodbury, New York, its officers, agents, successors, and assigns, and National Organization of Industrial Trade Unions, Jamaica, New York, its officers, agents, and representatives, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. July 9, 2004

Peter C. Schaumber, Member

[1] There are no exceptions to the judge's finding that the Respondent National Organization of Industrial Trade Unions (NOITU) violated Sec. 8(b)(1)(A) by accepting recognition and enforcing the terms of its collective-bargaining agreement at a time when NOITU did not represent an uncoerced majority of the Meadows Complex employees and by participating in a meeting arranged by Respondent North Hills Office Services at which it solicited employees to sign authorization cards in the presence of North Hills' vice president of Operations, Tom Pellegrino. Additionally, there are no exceptions to the judge's dismissal of allegations that Respondent North Hills violated the Act by conditioning employment on employees' acceptance of NOITU, paying employees for time spent at a NOITU meeting, and setting initial terms and conditions of employment.

Counsel for the General Counsel has moved to strike from inclusion in the case record the Regional Director's letter in Case 22–CA–25964 (*Raritan Building Services Corp.*), which was appended to the Respondent's brief in support of its exceptions. The motion is denied as moot. See also *Reliant Energy* 339 NLRB No. 13 (2003). Member Walsh would grant the motion. Reliant Energy states that parties will be allowed to bring to our attention "pertinent and significant authorities" after their briefs have been filed. The "pertinent and significant authority" involved in *Reliant Energy* was a recent decision by a United States court of appeals, which is clearly a document with precedential significance. A Regional Director's dismissal letter, on the other hand, has no precedential value, and thus, in Member Walsh's view, is not encompassed within the terms "pertient and significant authorities" as set forth in *Reliant Energy*. Accordingly, since it was not made a part of the record it must be excluded from consideration by the Board, because to consider such documents would deny the other parties to the proceeding an opportunity for voir dire and cross-examination and would violate Sec. 102.45(b) of the Board's Rules and Regulations. See *Electron-Tec, Inc.*, 310 NLRB 131 (1993); *Today's Man*, 263 NLRB 332, 333 (1982).

[2] We affirm the judge's ruling allowing SEIU's attorney, Larry Engelstein, to testify even though he was acting as SEIU's representative at the hearing. See *Page Litho, Inc.*, 311 NLRB 881 fn.1 (1993); *Wells Fargo Armored Services Corp.*, 290 NLRB 872, 873 fn.3 (1988). Respondent North Hills contends that the admission of Engelstein's testimony violated the judge's sequestration order. During the hearing, the judge warned the parties that the credibility of witnesses who were present during the testimony of other witnesses would be subject to attack. We find that the judge fairly applied the sequestration order to all parties to this proceeding, and we affirm her application of it.

[3] In adopting the judge's finding that the Meadows Complex remained an appropriate unit for bargaining after the Respondent North Hills acquired the Meadows Complex contract in August 2002, we also rely on uncontradicted evidence that the Meadows Complex building supervisors retained at least limited local autonomy. North Hills' Vice-President Pellegrino's testimony confirmed that the building supervisors oversaw the work of the night cleaning staff, released employees if they needed to leave work, trained employees on the use of equipment, and recommended disciplinary measures to Pellegrino. This evidence of continued local autonomy further supports the continued appropriateness of the Meadows Complex as a single-facility unit. See *Esco, Inc.*, 298 NLRB 837, 838 (1990) (basing appropriateness of single-facility unit in part on a finding of "limited local autonomy" stemming from the employer's reliance on leadmen to oversee operations). For this reason, *Trane*, 339 NLRB No. 106 (2003); *Waste Management Northwest*, 331 NLRB 309 (2000); and *P.S. Elliot Services*, 300 NLRB 1161 (1990), cited by North Hills, are distinguishable. In both *Trane* and *Waste Management Northwest*, the Board relied on the fact that the single facility had no local supervision, and in turn, no level of local autonomy. Here, the Meadows Complex had two on-site supervisors invested with at least limited local autonomy to oversee the day-to-day operations of the facility. In *P.S. Elliott*, the Board relied on the fact that all the employer's employees were under the common supervision of five area supervisors. Here, while the Meadows Complex was effectively under the direct supervision of Pellegrino for the opening months of the Employer's operation, its other sites were often under the immediate supervision of a project supervisor, who in turn reported to either Pellegrino or another operations supervisor.

Dennis P. Walsh, Member

Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Julie L. Kaufman, Esq., for the General Counsel.
Mark Portnoy and *Murray Portnoy (Portnoy Messinger Pearl & Associates, Inc).*, of Syosset, New York, for Respondent North Hills Office Services.
Stephen H. Kahn, Kahn Opton, LLP, of Fort Lee, New Jersey, for Respondent National Organization of Industrial Trade Unions.
Jodi P. Goldman, Esq., Service Employees International Union, Local 32B-32J, New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARGARET M. KERN, Administrative Law Judge. This case was tried before me in Newark, New Jersey on April 8 and 9, and May 5 and 6, 2003. An amended consolidated complaint issued on March 14, 2003, based upon unfair labor practice charges and amended charges filed by Services Employees International Union, Local 32B-32J, AFL–CIO (Charging Party or Local 32B-32J) on September 27, 2002, November 18, 2002, and January 23, 2003, against North Hills Office Services (North Hills or Respondent) and National Organization of Industrial Trade Unions (NOITU or Respondent).

It is alleged that since August 31, 2002, North Hills has been a successor employer to Harvard Maintenance, Inc. (Harvard) at an office complex located at 201-301 Route 17 North, Rutherford, New Jersey (201/301), and that it has unlawfully refused to recognize and bargain with Local 32B-32J as the representative of the building service employees employed at that location. It is further alleged that North Hills rendered unlawful assistance to NOITU, and unlawfully recognized NOITU as the collective bargaining representative of those same employees. Respondents defend these allegations on the grounds that North Hills is not a successor employer to Harvard, and that the building service employees at 201/301 were appropriately accreted to a preexisting bargaining unit between North Hills and NOITU.

FINDINGS OF FACT

I. JURISDICTION

North Hills is a corporation with a main office located in Woodbury, New York. It is engaged in the provision of commercial building cleaning services in the New York/New Jersey metropolitan area, including the two office buildings located at 201/301. Respondents admit, and I find, North Hills is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

Respondents admit, and I find, that Local 32B-32J and NOITU are each labor organizations within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

A. Collective-bargaining relationship between Local 32B-32J and Harvard

1. Multistate agreement

Harvard is a cleaning contractor that operates in the New York/New Jersey metropolitan area. It employs approximately 1,500 building service employees within the City of New York. In addition, Harvard employs building service employees at 22 locations in the State of New Jersey. Prior to 1996, Harvard was a member of the Contractors Association of New York City, an organization that negotiated collective-bargaining agreements with Local 32B-32J. Since the dissolution of that organization, Harvard has negotiated individually with Local 32B-32J. Harvard was signatory to the 1999 Independent Contractors Agreement (1999 ICA), which was effective by its terms from January 1, 1999 to December 31, 2001.[1] That agreement contained the following relevant provisions:

> *Article I, Section 2:* This Agreement shall apply to all service employees employed in any facility, including residential buildings, in the City of New York, Nassau and Suffolk counties, and New Jersey . . .
> The Employer shall be bound by each of the following agreements in the event the Employer performs work covered by those agreements:
> . . . d) The 1999 Independent Contractors Agreement covering New Jersey . . .
> *Article II, Section 1*: The Union is recognized as the exclusive collective bargaining representative of all classifications of service employees within the bargaining unit as defined in Article I, Section 2, above.

Harvard is presently signatory to the 2002 Independent Contractors Agreement (2002 ICA), the successor agreement to the 1999 ICA. The agreement is effective by its terms from January 1, 2001 to December 31, 2004. In the 2002 ICA, the following relevant provisions appear:

> *Article I, Section 2*: This Agreement shall apply to all service employees employed in any facility, including residential buildings, in the City of New York, Nassau, Suffolk, Westchester, Putnam, Dutchess, Rockland, Orange and Sullivan counties, New Jersey (north of Rote 195) and Connecticut . . .

[1] This agreement was not offered into evidence by the Charging Party until after the close of the hearing, and Respondent North Hills objects to its introduction. This agreement was produced pursuant to subpoena at the hearing, a copy was provided to all parties, and it was the subject of testimony. Moreover, I indicated to the parties at the hearing that the document was relevant. I therefore overrule the objection, and receive the document into evidence as C.P. Exh. 5.

> The Employer shall be bound by each of the following agreements in the event the Employer performs work within the geographical areas subject to those agreements:
> . . . c) The 2001 Independent Contractors Agreement covering New Jersey.
> *Article II, Section 1*: The Union is recognized as the exclusive collective bargaining representative of all classifications of service employees as defined in Article I, Section 2, above.

The lowest hourly wage rate for building service employees in the 1999 ICA was in excess of $15 per hour, and in the 2002 ICA, the lowest hourly wage rate is in excess of $17.[2]

2. Regional agreement

In addition to the ICA, Harvard has been signatory to regional agreements with Local 32B-32J, including the 1999 New Jersey Independent Contractors' Agreement (1999 NJCA).[3] The 1999 NJCA, by its terms, was coterminous with the 1999 ICA. According to Larry Englestein, General Counsel of Local 32B- 32J, in May 2001, Local 32B-32J negotiated what he described as a novation or mid-term modification of the 1999 NJCA.[4] The new agreement, the 2001 New Jersey Contractors' Agreement (2001 NJCA), was intended to transition from a situation where every building in New Jersey was subject to different economic terms to the situation were economic terms were uniform across geographic zones in New Jersey. The 2001 NJCA was signed by Stanley Doobin, Harvard's owner, on June 21, 2001. Michael Fishman, president of Local 32B-32J, signed the 2001 NJCA with Harvard on November 14, 2001. By its terms, the 2001 NJCA is effective from the date of its execution until December 31, 2004. The first page of the agreement (herein referred to as the preamble), states as follows:

> A. The Employer agrees to be bound by the Independent Contractors Agreement (ICA), attached hereto as Exhibit A,[5] and its successor agreement. If the Employer has not already done so, it shall execute the ICA.
> B. Notwithstanding anything to the contrary in the ICA, the 2001 New Jersey Contractors Agreement, attached hereto as Exhibit B, shall apply within the Union's jurisdiction in New Jersey (the State of New Jersey from Route 195 North) instead of the 1999 New Jersey Independent Contractors Agreement.
> C. Until the implementation date in any Zone (or part thereof), as defined in the 2001 New Jersey Contractors Agreement, only article I of that Agreement shall apply . . .
> Article 1 of the 2001 NJCA provides:
>
> 1.1 This Agreement shall apply to all service employees (subject to the Union's agreement with Local 68 of the International Union of Operating Engineers) employed in any facility, over 100,00 square feet (and in residential buildings) in the State of New Jersey from Route 195 North, except that economic terms and conditions for residential buildings, hospitals, department stores, schools, charitable, educational and religious institutions, race tracks, nursing homes, theaters, hotels, shopping malls, golf courses, bowling alleys and industrial facilities shall be set forth in riders negotiated for each location covered by this Agreement.
> 1.2 The Union is recognized as the exclusive collective bargaining representative for all classifications of service employees within the bargaining unit defined above.

The 2001 NJCA also contains a series of economic riders. The Zone 2 rider provides in relevant part:

> The following terms and conditions shall apply to all Class A or B commercial office buildings in Essex County (excluding the City of Newark), Hudson County (excluding locations in Zone 1), Bergen, Union, Middlesex and Morris Counties, when the terms are triggered in that county, or portion thereof (the implementation date). The terms are triggered in a county...when the Union demonstrates that 55% of the Class A and B commercial office buildings 100,000 square feet or over in that county...are cleaned by employers bound by the [ICA] . . .
> Wages: 1.1. The minimum wage rate for cleaners shall be $7. All incumbent full time employees shall receive the minimum rate or an increase of 50 cents per hour, whichever is greater, on the implementation date. All incumbent part time employees shall receive the minimum rate or an increase of $1 per hour, whichever is greater, on the implementation date . . .

3. Single site recognition agreement

On March 9, 2001, Harvard entered into a cleaning services contract with Linque Management Company, Inc., the managing agent for 201/301. In September and November 2001, Local 32B-32J organizers went to 201/301 and solicited employees to sign authorization cards. On November 13, 2001, Doobin signed a recognition agreement with Local 32B-32J, and Fishman signed the agreement on November 15, 2001. The agreement provided as follows:

The employer Harvard Maintenance recognizes [Local 32B-32J] as the sole and exclusive bargaining representative for the employees in the unit described below based on signed and dated authorization cards presented by the union demonstrating a majority of the employer's employees at the location listed below have selected the union as their collective bargaining representative and pursuant to the Independent Contractors Agreement:

> All full-time and part-time employees employed at 201/301 Route 17, Rutherford, as building service employees, excluding guards and supervisors as defined in the National Labor Relations Act.

---

[2] The terms of the 1999 ICA and the 2002 ICA cover guards as well as cleaners. The hourly wage rate for guards is slightly lower than the wage rate for cleaners. There are no guards employed at 201/301.

[3] This is the same agreement referenced in art. I, sec. 2 of the 1999 ICA. The 1999 NJCA was not introduced into evidence and is not part of this record.

[4] Respondent North Hills' motion to strike Englestein testimony, made in its brief, is denied.

[5] At of the time Harvard signed the 2001 NJCA, Exhibit A was the 1999 ICA. It was replaced by the 2002 ICA when that agreement was negotiated to succeed the 1999 ICA.

B. Harvard's operation at the 201/301 office complex

Harvard performed cleaning services at 201/301 from March 9, 2001 to August 30, 2002, and employed six full-time employees and 21 part-time employees. The full-time employees were porters and matrons who worked days, and the part-time employees were cleaners who worked from 6:00 p.m. to 10:00 p.m. A part-time evening supervisor was assigned to work in each of the two buildings to supervise the cleaners. Carlos Rodriguez was the building supervisor for 201, and Cesar Ramales was the building supervisor for 301. The building supervisors possessed the keys to open the doors, distributed cleaning supplies to the employees, inspected the work of employees, and performed cleaning work themselves. The building supervisors reported to a senior supervisor, Athel Still, who worked onsite. Still made all work assignments and had the authority to discharge employees. Harvard provided all of the equipment (vacuums, mops, pails, trash cans, floor waxing and polishing machines) and supplies (hand towels, toilet paper, plastic bags, cleaning solutions, polishes) used by the employees.

Thomas Smiley is Harvard's vice-president for New Jersey operations and his office is in Summit, New Jersey. Smiley testified that Harvard's 22 sites in New Jersey are located in areas of Edison, Bergen, and Orange. He further testified that the 201/301 site is not in close geographic proximity to the other sites.

During the period that Harvard operated at 201/301, it maintained three levels of supervision above the onsite supervisors. A field supervisor worked in the evenings and traveled from site to site providing operational support. She dealt with the site supervisors, performed inspections, and made sure supplies were sufficient. The field supervisor reported to the operations manager, who visited all 22 sites on a regular basis. Together, the field supervisor and the operations manager were responsible for hiring. The operations manager reported to Smiley, who also visited the New Jersey sites on a regular basis.

There was limited interchange of employees among the New Jersey sites. One employee traveled among the sites and his job was to shampoo carpets, and to strip and wax floors. According to Smiley, during the period that Harvard operated at 201/301, this employee did not have occasion to work there because the building supervisors at 201/301 organized their own crews to perform that work. Smiley could not recall an instance of an employee being transferred from one New Jersey site to another site, and there was no interchange of employees between New Jersey and New York.

Each week, employees' hours were reported to Smiley from each of the 22 New Jersey sites. He reviewed the information, it was entered into the company's computer system, and then forwarded to company headquarters in New York. Payroll and benefits were centrally administered by Sonya Sumereba, Vice President of Administration. Smiley maintained in his New Jersey office all job applications and I-9 forms for New Jersey job applicants, and forwarded copies to administration.

Of the 22 Harvard sites in New Jersey, Local 32B-32J represented only those employees employed at 201/301. As indicated previously, Local 32B-32J was not recognized by Harvard to represent those employees until November 2001, and the Local 32B-32J wage rates were not implemented until January 1, 2002. The 201/301 building supervisors were paid $8 per hour, and the evening workers received $7 per hour. The full-time day workers earned between $9 and $10 per hour. Ramales testified that his benefits included one week of paid vacation, paid sick days, a personal day, and eight paid holidays.

C. North Hills' operation

As of August 31, 2002, North Hills employed approximately 366 cleaning service employees at 59 locations: 58 on Long Island (Nassau and Suffolk Counties) and 201/301.[6] To the east, these sites extended to Hauppauge, Long Island, which is 20 miles from North Hills' headquarters in Woodbury. To the west, the sites extended to the 201/301 site in New Jersey. It is not clear how many miles the 201/301 office complex is from Woodbury, although in terms of relative distances, there was testimony that it is a 20-minute drive, without traffic, from Woodbury to Hauppauge, and a 45-minute drive from Woodbury to the 201/301 office complex.

Paul Kaplan has been Respondent's president and owner for the past 32 years. Reporting to Kaplan is Thomas Pellegrino, vice-president of operations, who oversees the day-to-day operations of all of North Hills' sites.[7] Eddie Matos, the operations manager reports to Pellegrino, and five operations supervisors report to Matos. Pellegrino, Matos, and the operations supervisors work out of the Woodbury headquarters, and all visit the sites on a regular basis. Pellegrino, Matos, and one of the operations supervisors interview and hire all employees. All supplies are centrally ordered out of Woodbury and are either stocked in a warehouse in Woodbury, or drop shipped directly to worksites. Supplies that are kept in the warehouse are delivered to the worksites by warehouse employees using company vans. The warehouse manager, Juan Rivera, also goes to jobsites, on an as-needed basis, to fill in for an absent employee, or to perform services on an emergency basis.

North Hills employs full-time porters who work in the daytime, and part-time cleaners who work in the evenings. In addition, there are five floating employees who report each evening to Woodbury. They are dispatched by Matos to various sites to fill in for absent employees, to deliver supplies, to clean carpets, or to polish floors. The floating employees travel to the worksites in company vans and if necessary, they transport the equipment they use, such as floor scrubbers and polishers.

There is a site supervisor at each North Hills' location. The site supervisors work part-time in the evenings. If the supervisor is absent, one of the managers from Woodbury fills in. If there is a problem with an employee, the site supervisor reports the matter to Pellegrino. It is Pellegrino's decision whether the employee is disciplined or terminated, and the site supervisor carries out Pellegrino's instructions. Site supervisors are re-

[6] Respondent had a contract to perform cleaning services at a 60th location in Douglaston, Queens, but this work was subcontracted to another firm and Respondent had no employees at that location . The Douglaston, Queens location is discussed in further detail below. In March 2003, North Hills acquired a 61st location, in Florham Park, New Jersey.

[7] Kaplan and Pellegrino are admitted agents and supervisors of Respondent North Hills.

sponsible for calculating employees' work hours and for forwarding that information to the payroll department in Woodbury. They instruct employees' in their duties and ensure the work is done properly. North Hills provides all of the equipment and cleaning supplies used by employees.

Pellegrino testified that seniority is credited on an employer-wide basis. In the event of a layoff at a particular worksite, the junior employee at the site is laid off but is eligible to bump a less senior employee at a different location if they so choose. Pellegrino testified that there have been occasions when employees have requested a permanent transfer, and he has tried to accommodate such requests. Employees who are transferred retain their seniority, wages and benefits.

Employees are temporarily reassigned to different worksites for reasons of absenteeism and/or workload. Mindy Levy, North Hills' comptroller, testified that these types of transfers occur on a company-wide basis approximately 30 times each week.

Payroll checks are centrally generated out of Woodbury and either mailed or delivered to each site. Levy administers payroll, benefits, and all human resource matters from her office in Woodbury. She coordinates employee vacation schedules, provides letters of reference and employment verification statements, and handles all filings for disability benefits and Worker's Compensation. She maintains job applications and all employee personnel files.

D. North Hills' collective-bargaining relationship with NOITU

NOITU has represented all of North Hills' employees in a companywide unit since 1974. The October 18, 2000 to November 23, 2003 agreement, in evidence in this case, provided in relevant part:

> Section 1, Recognition: The Employer recognizes and acknowledges the Union as the sole and exclusive bargaining agency for all of its full-time and regularly scheduled part-time employees excluding office clerical, supervisory, foremen, guards, and watchmen.
> Section 3, paragraph 5: It is understood that any jobs hereinafter acquired by the Employer, or any subsidiary of the Employer, or by any corporation controlled by the Employer, shall be deemed an expansion of the Employer's establishment and business and an accretion to the bargaining unit herein above described, and such new job shall be deemed to be automatically covered by the provisions of this Agreement . . . The Employer shall give the Union written notice of said jobs prior to their commencement.

The only historical exception to the company-wide NOITU unit was the Douglaston, Queens location. That location is owned by a company called Leviton Manufacturing. According to Kaplan, when North Hills obtained the cleaning contract from Leviton in 1988, Leviton insisted that North Hills' employees be represented by Local 32B-32J. North Hills negotiated a single-site agreement with Local 32B-32J covering that single location, and the agreement was in effect from 1988 to 1994. In 1994, North Hills decided to subcontract the work at Leviton to Paris Maintenance, a Local 32B-32J contractor. The subcontracting arrangement with Paris Maintenance has continued uninterrupted since that time.

Kaplan testified that 8 years ago, North Hills acquired a cleaning contract in Melville, Long Island where employees had been represented by Local 32B-32J while working for the predecessor employer. When North Hills took over the site, the employees became part of the company-wide NOITU unit.

Pellegrino testified that he sets the wage rates for employees at every site. The NOITU agreement sets a minimum wage of $5.75 per hour, and Pellegrino is free to set wage rates provided the rate does not fall below the minimum. He also retains the authority, under the NOITU agreement, to give merit wage increases. It is not uncommon for North Hills' employees working at the same jobsite to have different wage rates, nor is it uncommon for a new hire to have a higher wage rate than an existing employee. As of August 31, the wages of cleaning service workers at all of North Hills' locations ranged from $6 to $10.90 per hour. The wages for lead persons ranged from $7.25 to $10 per hour.

The NOITU agreement contains a union security clause and provides for dues checkoff.

E. North Hills' Acquisition of the Cleaning Contract at the 201/301 Office Complex

In the summer of 2002, Linque entered into negotiations with North Hills to replace Harvard as the cleaning contractor at 201/301. Linque requested that the Local 32B-32J wage rates be maintained, and that there be no interruption in medical coverage for the full-time employees. Kaplan agreed to these terms and North Hills was awarded the contract effective September 1, 2002.[8] North Hills did not commit to pay the wage increases under the Local 32B-32J agreements, nor did it commit to maintain any other benefits.

North Hills placed want ads in local newspapers to solicit job applicants. Pellegrino also visited the office complex on Saturday, August 17 and Saturday, August 24, 2002 and distributed job applications to Harvard's employees working at the site. He testified that he told the night cleaners they would be hired at the same rate of pay, but he made no mention of other benefits during the interviewing process. He did tell the day porters that North Hills had a medical benefits package. Pellegrino testified that at no time during the interviewing process did any Harvard employee inquire about what union would represent them, and he denied telling any of the Harvard employees if they came to work for North Hills they would be covered by the NOITU collective-bargaining agreement.

Ramales testified that on August 17, he completed the North Hills' employment application and gave it to Pellegrino. Pellegrino then spoke with the aid of a Spanish translator to a group of about nine Harvard employees. Pellegrino asked each employee what floor he or she worked on. Ramales said he was a supervisor and asked if he would remain a supervisor. Pellegrino said he would. According to Ramales, Pellegrino told the employees they would be paid the same wage rate they were currently earning, and that they would have the same benefits.

[8] The parties stipulated, however, the North Hills' first work shift at 201/301 was on August 31, 2002.

On direct examination, Ramales testified that Pellegrino said he was going to bring in his own union and that "if we were not to continue with the union that he was going to bring in, that there would not [be] any work then." On cross examination, Ramales changed his testimony and said Pellegrino did not say anything about losing work. On redirect examination, Ramales reverted to his previous testimony and said that Pellegrino told employees, "Those that didn't like the new union, there wasn't going to be any work."

By letter dated August 19, 2002, Murray Portnoy, North Hills' labor representative, wrote to Michael Fishman, president of Local 32B-32J, and advised him that effective September 1, 2002, North Hills would be taking over the cleaning and maintenance services at the 201/301 site. Portnoy continued:

We anticipate offering a job to all the current/active employees working at the Meadows Office Complex. They will be covered pursuant to our agreement with NOITU. . . We are going to red-circle their current hourly rate and for all other matters they will be covered under the terms and conditions of our agreement with NOITU.

On August 21, 2001, Kevin Brown, an organizer for Local 32B-32J, wrote to Kaplan and advised him that he was making formal application for the employees at 201/301 to be hired by North Hills.

On August 24, 2003, Ignacio Velez, an organizer for Local 32B-32J, went to 201/301 wearing a concealed tape recorder. He entered the cafeteria where Pellegrino was meeting with and interviewing the Harvard employees. Velez did not identify himself at first, and asked Pellegrino for an application. Pellegrino asked Velez what position he was interested in and they discussed the availability of day versus evening work. According to Velez, he asked Pellegrino if North Hills was union and Pellegrino responded, "right now its NOITU." Velez said he was familiar working with unions and Pellegrino supposedly asked, "what union, Local 32B-32J?" Velez said no, he was familiar with Local 68. Pellegrino told Velez to fill out the application and they would talk during the interview. Some time thereafter, Velez started to walk out of the cafeteria and Pellegrino approached him and asked him for the application back. Velez asked Pellegrino if he knew about Local 32B-32J. Pellegrino said he knew that Local 32B-32J represented employees in some buildings in the area. Velez asked if Pellegrino knew that Local 32B-32J represented the employees at 201/301. Pellegrino at first said no, and when Velez asked again, Pellegrino said yes, he did know that. Pellegrino asked Velez if he was with Local 32B-32J and Velez acknowledged he was a delegate. Pellegrino asked to see some identification and Velez showed him a photo ID and his union medical insurance card. According to Velez, Pellegrino then pulled out his own union identification card. Velez asked him, "so you work for NOITU?" and Pellegrino said yes. Pellegrino again asked Velez for the employment application back, but Velez refused and left. On cross examination, Velez was asked if Pellegrino spoke to employees about Local 32B-32J, and Velez testified that Pellegrino did not. He was asked if he heard Pellegrino talking about NOITU to employees, and Velez said he could not recall.

On Saturday, August 31, North Hills delivered equipment and cleaning supplies to the 201/301 site. Pellegrino told Ramales that he should leave the employees in the same work assignments as they had when they worked for Harvard.

Ramales testified that on Thursday, September 5, 2002, at 5:45 p.m. he was told by Pellegrino to call all of the employees to a meeting in the lobby of the 301 building. At the meeting, Pellegrino introduced several individuals as representatives from NOITU. In Pellegrino's presence, the NOITU representatives handed out authorization cards which the employees signed. It was not until the meeting was over, at 6:30 p.m., that the employees signed in to begin their shifts. They were not paid for the time they spent at the meeting. An examination of NOITU's records reveals that North Hills began deducting dues from employees' paychecks, and remitting those dues to NOITU, on September 18, 2002.

Ramales testified that the manner in which he performed his job did not change from the time he worked for Harvard to the time he worked for North Hills. His hours remained the same, he received the same rate of pay and the same number of paid holidays.[9] He cleaned the same areas, using the same type of equipment, and inspected the work of the same employees. There was, however, a change in the supervisory structure. Athel Still, the senior supervisor, was not retained by North Hills and that level of onsite supervision was eliminated. In September 2002, Pellegrino was present at the site three times per week, sometimes for up to 16 hours at a time. On August 31, Pellegrino told Ramales Ramales would remain the building supervisor for 301, and he told Ramales to leave employees in the same work assignments they had when they worked for Harvard. Pellegrino testified that the building supervisors also made work assignments.

Following the takeover of the 201/301 site by North Hills, the full-time employees were paid for 2 months of COBRA coverage so they could continue receiving benefits under the Local 32B-32J health plan. After 2 months, they became eligible for the NOITU health plan.

The first time there was an interchange of employees involving 201/301 was in mid-November 2002, and since that time interchange has occurred with varying frequency. The senior supervisor position that had been eliminated when North Hills first took over was reinstated a month before the hearing.

Payroll records for the period ending September 3, 2002, show that 23 of the 27 employees employed by North Hills at 201/301 had previously been employed at that location by Harvard.

F. Local 32B-32J's Demand forRecognition

By letter dated September 18, 2002, Brown wrote to Kaplan and stated that as the successor employer to Harvard, North Hills had a duty to recognize and bargain with Local 32B-32J under applicable successorship law, and that Brown was making a demand for bargaining.

[9] Ramales was terminated in late September 2002 by North Hills because of employee complaints about him. The basis for his belief that he received the same number of paid holidays is therefore not clear.

By letter dated September 19, 2002, Portnoy wrote to Brown reminding him that he represented North Hills and that if Brown wished to schedule a meeting, he should contact Portnoy's office and set up a mutual time and place to meet. Portnoy added, "I will be glad to listen to whatever you have to say."

On September 20, 2002, Englestein called Portnoy and asked him if North Hills was going to recognize Local 32B-32J at the 201/301 site. Portnoy responded that North Hills' viewed the location as an accretion to the existing bargaining unit covered by the NOITU agreement, and North Hills would not recognize Local 32B-32J. Englestein sent a letter to Portnoy on September 24, 2002 confirming their conversation.

IV. ANALYSIS

A. The accretion issue

An accretion is the incorporation of employees into an already existing larger unit when such a community of interest exists among the entire group that the additional employees have little or no separate group identity. Thus, they are properly governed by the larger group's choice of bargaining representative. *NLRB v. Security-Columbian Banknote Co*., 541 F.2d 135, 140 (3d Cir. 1976); *Giant Eagle Markets Co*., 308 NLRB 206 (1992); *Safeway Stores*, 256 NLRB 918 (1981). The Board has followed a restrictive policy in finding accretions because it forecloses the employees' basic right to select their bargaining representative. *Towne Ford Sales*, 270 NLRB 311 (1984), affd. sub nom. *Machinist District Lodge 190 v. NLRB*, 759 F.2d 1477 (9th Cir. 1985). The factors relevant to finding an accretion include the degree of centralization of managerial and administrative control, common control over labor relations, collective bargaining history, geographic proximity, integration of operations, day-to-day supervision, interchange of employees, and similarity of skills, functions, and working conditions. In any given case, some factors will militate in favor of accretion, and some against, and whether or not a particular operation constitutes an accretion or a separate unit therefore turns on the facts and circumstances that existed on the date the union demanded recognition. *Gould, Inc*., 263 NLRB 442 (1982). In this case, Respondent North Hills took over the cleaning operation at the 201/301 complex on August 31, 2002, and Local 32B-32J demanded recognition on September 18, 2002. It is therefore the facts and circumstances that existed during this 19-day period that must be considered.

During the relevant period of inquiry, North Hills maintained centralized managerial and administrative control over all of its work locations, including the 201/301 site. As vice-president of operations, Pellegrino oversaw the day-to-day operations at all 59 sites. Pellegrino, the operations manager, and the five operational supervisors all worked out of the central offices in Woodbury. Pellegrino was present at the 201/301 site on an average of two to three times per week during the relevant period, for extended periods of time. Equipment and supplies for all locations were ordered out of the Woodbury office. Payroll, personnel files, and employee benefits were centrally administered by Levy.

North Hills also maintained central control over labor relations. Since 1974, North Hills' owner has negotiated a company-wide agreement with NOITU for all cleaning employees in its employ, and that agreement was in effect during the relevant period. Levy was the contact person for all inquiries about wages and benefits under the NOITU agreement. Pellegrino, the operations manager, and one of the operations supervisors were responsible for interviewing and hiring all employees at all locations. Subject to the minimum wage rates contained in the NOITU agreement, Pellegrino set wage levels for all employees at all locations.

The 201/301 site is not geographically proximate to North Hills' worksites on Long Island. Although no direct evidence was adduced as to the number of miles that separates 201/301 from North Hills' other sites, there is evidence that the 201/301 locations is, on a relative basis, twice the distance from the company's offices in Woodbury as the furthest location on Long Island is from the Woodbury offices.

During the relevant period of inquiry, there was no functional integration of operations and no interchange of employees involving 201/301. None of the five floating employees was assigned to work at 201/301 and none of the employees at the 201/301 site was assigned to work at a different location. The equipment used at 201/301 was delivered to that site on August 31 and remained at that site. While temporary transfers of employees were occurring on a regular basis among the other 58 sites on Long Island, there was no interchange involving the 201/301 site.

When Harvard operated at the 201/301 site, there were two levels of onsite supervision: a senior supervisor who oversaw operations in both buildings, and two building supervisors who reported to the senior supervisor. Upon North Hills' assumption of the operation, the senior supervisor position was eliminated and his duties were largely assumed by Pellegrino. Pellegrino was at 201/301 for extended periods of time, he retained the authority to discipline or discharge employees, and he, together with the building supervisors, determined work assignments.

During the relevant period, the employees at 201/301 had the same skill level, the same job duties, and worked the same hours as North Hills' other employees. They used the same type of cleaning equipment, and used the same type of cleaning supplies. Their wages were within the range of wages paid by North Hills to all of its employees at all of its locations.

With respect to the history of collective bargaining, there is conflicting evidence as to the scope of the bargaining unit that covered the 201/301 employees prior to the takeover by Respondent. In 1999, Harvard executed the 1999 ICA, and thereby agreed to recognize Local 32B-32J as the bargaining representative for all of its employees, in every facility, located within the City of New York, Nassau and Suffolk Counties in New York, and the entire State of New Jersey. The 1999 ICA was succeeded by the 2002 ICA, which broadened the geographic boundaries of the bargaining unit even further. In addition to the locations covered by the 1999 ICA, in 2002, recognition was extended to include Harvard's employees employed in any facility in Westchester, Putnam, Dutchess, Rockland, Orange, and Sullivan counties in New York, and the entire State of Connecticut. As Brown testified, "it's one union for three

states." Thus, for the entire period of time that Harvard operated at 201/301, March 2001 to August 2002, it was party to a collective-bargaining agreement that recognized Local 32B-32J in a company-wide, multi-location unit. Yet, the uncontradicted testimony of Smiley is that the terms of the ICA agreements were never applied to any of the 22 Harvard locations in New Jersey, and his testimony was corroborated by Brown and Englestein. It was also corroborated by Harvard's payroll records that showed that the employees at 201/301 earned between $7 and $10 per hour, far below the wage rates of $17 per hour and more set forth in the ICA's. Further complicating this picture, in June 2001, Harvard recognized Local 32B-32J as the collective bargaining representative in a regional unit encompassing the area of New Jersey north of I-195. That agreement specifically provided that even though the economic terms of the agreement were not applicable until a certain defined set of triggering criteria existed, the recognition clause was immediately applicable. Finally, in November 2001, Harvard signed yet another agreement with Local 32B-32J, this time recognizing Local 32B-32J in a unit limited to the 201/301 site. Contrary to the arguments of counsel for the General Counsel and the Charging Party, the forgoing does not, in my view, clearly establish a history of collective bargaining in a single-site unit.

There are several factors that favor a finding of accretion in this case. During the relevant period, North Hills exercised centralized managerial and administrative control and common control over labor relations. To a significant degree, day-to-day supervision was centrally controlled by Pellegrino and his operations staff. In addition, the employees at 201/301 share the same skills, job functions, and working conditions as Respondent's other employees. Militating against a finding of accretion are the facts that 201/301 is twice the distance from Respondent's central offices than any of its other locations, and that, during the relevant period, there was no functional integration of operations and no employee interchange. The evidence as to whether the history of collective bargaining for these employees was as a single-site unit, as a regional unit, or as a companywide, multistate unit, is unclear. This factor, therefore, does not weigh heavily one way or the other.

This presents a close issue, but on balance, I must conclude that during the period August 31 to September 18, 2001, the employees at 201/301 retained a sufficiently separate group identity to establish an appropriate bargaining unit, and to warrant rejection of Respondents' accretion claim. I do so for the reason that a single-facility unit is presumptively appropriate for collective bargaining, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *Dattco, Inc*., 338 NLRB No. 7 (2002), citing *New Britain Transportation Co*., 330 NLRB 397 (1999), and *J & L Plate*, 310 NLRB 429 (1993). Given the total lack of functional integration and employee interchange, and the significant distance that separates the 201/301 site from Respondent's 58 other sites, on balance, I must conclude Respondents have not rebutted that well-settled presumption.

B. The Successorship Issue

In *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), the Supreme Court set forth the criteria for determining whether a new employer is the successor to the prior employing entity. The approach is primarily factual and is based on the totality of the circumstances presented by each case. The Court instructed that the focus should be on whether there is "substantial continuity" between the enterprises, and whether a majority of the new employer's employees had been employed by the predecessor. The Court held that, in these circumstances, when one employer takes over the union-represented bargaining unit employees of another employer, it is bound to recognize the union as the collective bargaining representative of the employees in the unit.

The Supreme Court revisited the successorship issue in *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27 (1987), where it reiterated the requirement that a "substantial continuity" must exist between the enterprises before warranting a finding that the new employer is a successor. Among the factors examined are whether the business of both employers is essentially the same, whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors, and whether the new entity has the same production process, produces the same products and basically has the same body of customers. Id. at 43. The Court made it quite clear that the substantial continuity analysis in successor cases is to be taken primarily from the perspective of the employees, i.e., whether those employees who have been retained will understandably view their job situations as essentially unaltered. *Tree-Free Fiber Co*., 328 NLRB 389 (1999). Although each factor must be analyzed separately, they must not be viewed in isolation and, ultimately, it is the totality of the circumstances that is determinative. *The Bronx Health Plan*, 326 NLRB 810 (1998), enfd. 203 F.3d 51 (D.C. Cir. 1999). If it is determined that the new employer is in fact a successor of the old employer, and if a majority of the new employer's employees were employed by the predecessor, the new employer has an obligation to bargain with those employees' collective bargaining representative.

The employees at 201/301 constituted an appropriate unit following North Hills' takeover of the cleaning contract on August 31, 2002, and 23 of the 27 employees employed as of September 3, 2002, were employed by the predecessor company, Harvard. From the perspective of these employees, there was virtually no change in the way they actually performed their jobs. They performed the same cleaning duties, on the same floors, for the same occupants, using the same type of equipment and cleaning supplies, and at the same wage rate. Their immediate supervisors remained the same and there was no hiatus in their employment. The totality of circumstances persuade me that North Hills' operation at 201/301 was substantially similar to Harvard's operation, and that from the point of view of the unit employees, there was substantial continuity in the employing entity. I therefore find North Hills was and is the successor employer to Harvard at the 201/301 location. I further find that a majority of employees in the unit had previously been employed by Harvard, and that at all times since August 31, 2002, Local 32B-32J has been the exclusive

bargaining representative of those employees. By refusing to recognize Local 32B-32J on September 20, 2002, North Hills violated Section 8(a)(1) and (5) of the Act.

C. Unlawful Assistance

Ramales gave conflicting accounts of his conversation with Pellegrino on August 17, 2002. On direct examination, Ramales testified Pellegrino told employees if they did not support NOITU as their representative there would be no work for them. On cross examination, however, he testified that Pellegrino never made any reference to losing work. On redirect examination, he returned to his first version and said Pellegrino did threaten employees with loss of work if they did not "like" NOITU. Pellegrino, on the other hand, testified that on the two Saturdays in August that he interviewed employees, he did not discuss NOITU with them.

Pellegrino was a generally credible witness. Ramales, on the other hand, was clearly confused in his recollection of what Pellegrino told employees on August 17, 2002. Moreover, Ramales was terminated by Pellegrino 1 month after North Hills took over at 201/301, and he acknowledged during his testimony that he was angry about his termination. Given these circumstances, I find the credible evidence is insufficient to establish that Pellegrino threatened employees with loss of work if they did not select NOITU as their bargaining representative. Nor do I find that he conveyed to employees that their continued employment was conditioned upon their acceptance of NOITU as their representative. I therefore recommend dismissal of paragraph 20 of the complaint.

Ramales' uncontradicted testimony establishes that on September 5, 2002, Pellegrino called employees to a meeting in the lobby of the 301 building, and at that meeting, Pellegrino introduced NOITU representatives. Pellegrino remained while the representatives distributed authorization cards and solicited employees' signatures. Ramales testimony is corroborated by the signed authorization cards received in evidence. I therefore find the evidence is sufficient to establish that Pellegrino's conduct on September 5, 2002 constituted unlawful assistance to NOITU in violation of Section 8(a)(1) and (2) of the Act. *Famous Castings Corp*., 301 NLRB 404, 407 (1991). The corollary of this finding is the unlawful assistance received by NOITU. By soliciting employees to sign authorization cards while at North Hills' worksite, and in the presence of North Hills' vice president, Respondent NOITU received unlawful assistance in violation of Section 8(b)(1)(A). I decline, however, to find any violation based upon the fact that employees were paid for their time spent meeting with NOITU representatives. Ramales testified that the employees were not paid for their time and did not sign in until after the meeting was over. I therefore recommend dismissal of paragraph 19(c) of the complaint.

Immediately upon its takeover of the 201/301 site, North Hills recognized NOITU as the representative of the unit of cleaning service employees at 201/301, and applied the terms of its collective-bargaining agreement with NOITU to those employees. Beginning September 18, 2002, North Hills began to deduct dues from employees' paychecks. At no time did NOITU represent an uncoerced majority of the employees at 201/301, however, and by engaging in this conduct, North Hills violated Section 8(a)(1) and (2) of the Act. By accepting recognition for the employees at 201/301, and by enforcing its collective-bargaining agreement with respect to those employees, Respondent NOITU violated Section 8(b)(1)(A) of the Act.

D. Unilateral Change in Working Conditions

On August 19, 2002, North Hills communicated to Local 32B-32J that it would continue to pay employees their current hourly wage rate upon its takeover of the 201/301 site, but that all other working conditions would be pursuant to the terms of the NOITU agreement. The General Counsel argues that North Hills was not free to set initial terms and conditions of employment without first bargaining with Local 32B-32J. Specifically, the General Counsel argues that because Pellegrino unlawfully conditioned continued employment upon employees' rejection of Local 32B-32J in favor of NOITU, North Hills forfeited its right as a successor employer to set initial terms and conditions of employment under the principles set forth in Advanced *Stretchforming International, Inc.*, 323 NLRB 529 (1997). Because I find that Pellegrino did not, in fact, make any such statement to employees, the General Counsel's allegation is without merit.

As discussed previously, I found Ramales to be neither credible nor reliable when he testified that Pellegrino threatened employees with job loss on September 5. The only other evidence that even suggests that Pellegrino made similar statements was the testimony of Ignacio Velez who testified that on August 24, while "wired" with a concealed tape recorder, he was present at a meeting of employees where Pellegrino distributed job applications and conducted job interviews. Velez testified that at no time did Pellegrino speak to employees about Local 32B-32J, and that he "could not recall" if he spoke to employees about NOITU. The whole point of Velez going to the meeting was to witness and record any comments Pellegrino might make about what union was going to represent the employees. Velez feigned inability to recall whether Pellegrino mentioned NOITU, and the fact that no audiotape was introduced in evidence, leads me to credit Pellegrino's testimony that he did not discuss NOITU with any employees that day.

Respondent North Hills did not forfeit its right to set initial terms and conditions of employment for the employees at 201/301. It therefore had no obligation to bargain with Local 32B-32J prior to setting those initial terms. I therefore recommend dismissal of paragraphs 14, 15, and 16 of the complaint.

CONCLUSIONS OF LAW

1. Respondent North Hills is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 32B-32J and NOITU are each a labor organization within the meaning of Section 2(5) of the Act.

3. On August 31, 2002, Respondent North Hills became a successor employer of Harvard at 201/301.

4. The following employees constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part time building service employees employed at the Meadows Office Complex located at 201/301 Route 17 North, Rutherford, New Jersey site, but excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act.

5. Since August 31, 2002, Local 32B-32J has been the exclusive representative of all employees in the appropriate unit for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

6. On September 18, 2002, Local 32B-32J made a valid bargaining demand on Respondent North Hills.

7. Since September 20, 2002, Respondent North Hills has violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with Local 32B-32J.

8. Since August 31, 2002, Respondent North Hills has violated Section 8(a)(2) and (1) of the Act by extending recognition to NOITU as the exclusive bargaining representative of the unit employees, and by applying the terms of its collective-bargaining agreement with NOITU to the unit employees, at a time when NOITU did not represent an uncoerced majority of those employees.

9. On September 5, 2002, Respondent North Hills, by Pellegrino, violated Section 8(a)(2) and (1) of the Act by arranging for and attending a meeting with unit employees during which representatives of Respondent NOITU solicited those employees to sign union authorization cards.

10. Since August 31, 2002, Respondent NOITU has violated Section 8(b)(1)(A) of the Act by accepting recognition as the exclusive bargaining representative of the unit employees, and by enforcing the terms of its collective-bargaining agreement with Respondent North Hills with respect to the unit employees, at a time when it did not represent an uncoerced majority of those employees.

11. On September 5, 2002, Respondent NOITU violated Section 8(b)(1)(A) of the Act by participating in a meeting with unit employees that was arranged by a representative of Respondent North Hills, and by soliciting unit employees to sign union authorization cards, in the presence of a representative of Respondent North Hills.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent North Hills must withdraw and withhold recognition from Respondent NOITU as the representative of the employees at 201/301, and cease and desist from giving force or effect to any collective-bargaining agreement covering those employees, unless and until NOITU is certified by the Board as the collective bargaining-representative of those employees. However, nothing herein should be construed to require Respondent North Hills to vary any wage or other substantive term or condition of employment that has been established in the performance of the collective-bargaining agreement.

Respondent NOITU must cease and desist from acting as the bargaining representative of the employees at 201/301, and from giving force and effect to any collective-bargaining agreement covering those employees, unless and until it is certified by the Board as the collective bargaining representative of those employees.

Respondent North Hills must recognize and, on request, bargain with Local 32B- 32J as the exclusive collective bargaining representative of the employees at 201/301, and if an agreement is reached, reduce the agreement to writing.

Respondent North Hills and Respondent NOITU must jointly and severally reimburse all former and present employees employed at 201/301 since August 31, 2002, for all initiation fees, dues, and other moneys that may have been exacted from them pursuant to the union-security provisions of the Respondents' collective-bargaining agreement, with interest as provided for in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

A. The Respondent North Hills, Woodbury, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Recognizing and bargaining with Respondent NOITU at a time when NOITU does not represent an uncoerced majority of employees employed at 201/301 unless and until NOITU is certified by the Board as the collective-bargaining representative of such employees.

(b) Arranging for or attending any meeting of employees employed at 201/301 at which representatives of Respondent NOITU solicit employees to sign authorization cards.

(c) Entering into or giving force and effect to a collective-bargaining agreement with Respondent NOITU covering the employees at 201/301 unless and until Respondent NOITU is certified by the Board as the collective bargaining representative of those employees.

(d) Refusing to recognize and bargain with Local 32B-32J as the exclusive collective bargaining representative of employees employed at 201/301.

(e) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withhold recognition from Respondent NOITU as the representative of its employees at 201/301 unless Respondent NOITU has been certified by the Board as their exclusive collective bargaining representative;

(b) On request, recognize and bargain with Local 32B-32J as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

All full time and regular part time building service employees employed at the Meadows Office Complex located at 201/301 Route 17 North, Rutherford, New Jersey site, but excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act.

(c) Jointly and severally with Respondent NOITU, reimburse all former and present employees employed at 201/301 since August 31, 2002, for all initiation fees, dues, and other moneys that may have been exacted from them with interest as provided for in remedy section of this decision.

(d) Within 14 days after service by the Region, post at its 201/301 site in Rutherford, New Jersey copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by Respondent North Hills' authorized representative, shall be posted by Respondent North Hills immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent North Hills to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent North Hills has gone out of business or closed the facility involved in these proceedings, Respondent North Hills shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent North Hills at that location at any time since August 31, 2002.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent North Hills has taken to comply.

B. Respondent NOITU, Jamaica, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Acting as the collective bargaining representative of the employees at 201/301 unless and until it is certified by the Board as the collective bargaining representative of such employees;

(b) Maintaining or giving any force or effect to any collective-bargaining agreement between it and Respondent North Hills regarding the employees at 201/301 unless and until it is certified by the Board as the collective bargaining representative of those employees;

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Jointly and severally with Respondent North Hills, reimburse all former and present employees employed at 201/301 since August 31, 2002, for all initiation fees, dues, and other moneys that may have been exacted from them with interest as provided for in remedy section of this decision;

(b) Within 14 days after service by the Region, post at its union office in Jamaica, New York, copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by Respondent NOITU's authorized representative, shall be posted by Respondent NOITU immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent NOITU to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director sufficient copies of the notice for posting by Respondent North Hills, if willing, at all places where notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated at Washington, D.C., February 2, 2004

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT recognize and bargain with the National Organization of Industrial Trade Unions (NOITU) as the representative of our employees at the Meadows Office Complex located at 201/301 Route 17 North, Rutherford, New Jersey (201/301), unless and until NOITU is certified by the Board a the collective bargaining representative of those employees.

We will not arrange for or attend meetings with you where representatives of NOITU, or any other union, solicit union authorization cards from you.

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT enter into or give force and effect to any collective-bargaining agreement with NOITU covering our employees at 201/301 unless and until NOITU is certified by the Board as the collective bargaining representative of those employees.

WE WILL NOT refuse to recognize Local 32B-32J as the exclusive collective bargaining representative of our employees employed at 201/301.

WE WILL not in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL with hold recognition from NOITU as the representative of our employees at 201/301 unless and until NOITU is certified by the Board as their exclusive collective bargaining representative.

WE WILL, jointly and severally with Respondent NOITU, reimburse all former and present employees employed at 201/301 for all initiation fees, dues, and other moneys which may have been exacted from them, with interest.

WE WILL, on request, recognize and bargain with Local 32B-32J as the exclusive collective bargaining representative of our employees in the following appropriate unit concerning wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full time and regular part time building service employees employed at the Meadows Office Complex located at 201/301 Route 17 North, Rutherford, New Jersey site, but excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act.

NORTH HILLS OFFICE SERVICES

APPENDIX

NOTICE TO MEMBERS
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT act as the collective bargaining representative of the employees of North Hills Office Services at 201/301 Route 17 North, Rutherford, New Jersey, unless and until we are certified by the Board as the collective bargaining representative of those employees.

WE WILL NOT enter into or give force and effect to any collective-bargaining agreement with North Hills Office Services covering its employees at 201/301 Route 17 North, Rutherford, New Jersey, unless and until we are certified by the Board as the collective bargaining representative of those employees.

WE WILL NOT solicit authorization cards from employees employed by North Hills Office Services in the presence of representatives of North Hills Office Services.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, jointly and severally with North Hills Office Services, reimburse all former and present employees employed at 201/301 Route 17 North, Rutherford, New Jersey for all initiation fees, dues, and other moneys which may have been exacted from them, with interest.

NATIONAL ORGANIZATION OF INDUSTRIAL TRADE UNIONS